

Remarks

Claims 5, 17 - 18, 24, 26, and 28 - 30 are cancelled.

Claims 1, 2, 4, 6 - 7, 9, 21, 23, and 27 are amended.

Applicant respectfully submits that the present application is in condition for allowance based on the amendments and remarks submitted herewith.

Applicant respectfully requests that the Examiner withdraw the characterization of the present Office Action as "Final." If the Examiner will not withdraw the rejection as "Final" Applicant respectfully requests the Examiner to proceed on the present application as a request for continuing examination (RCE).

In the present Office Action, the Examiner cites two new references, United States Patent No. 5,777,895 (Kuroda) and US Patent No. 6,230,150 (Walker). Applicant is not aware of anything and the Examiner has not documented anything that was done in response to the prior Office Action which would have provoked the Examiner to cite new art. With the foregoing in mind, there is no justification for the Examiner to have submitted these references for the first time in the "Final" Office Action. These references were available at the time of the prior Office Action and should have been cited in the first Office Action. By not citing these references in the first Office Action, Applicant is prejudiced by having to pursue an RCE unnecessarily. With the foregoing in mind, Applicant believes that it is justifiable for the Examiner to withdraw the Final Office Action, and characterize this action as a second non-final Office Action.

Once again, Applicant does not wish the present application become abandoned and as such the Examiner is authorized to consider the present response in conjunction with an RCE.

With regard to the Examiner's rejections, the Examiner has rejected claims 1, 8-16, 22, 23, 27 and 30 under 35 USC §103 as being unpatentable over Kuroda in combination with Walker. Once again, this rejection is only being presented in the Final Office Action and there were no significant changes in the claims which would have provoked the Examiner to consider these references for the first time in this Final Office Action.

With regard to the rejections under 35 U.S.C. §103, it is respectfully submitted that Applicants' claims are patentable, as the Examiner has failed to establish a *prima facie* case of obviousness. According to Section 706.02 (j) of the MPEP the Examiner must meet three basic criteria to establish a *prima facie* case of obviousness:

- (1) first, there must be some reasonable suggestion or motivation in the prior art to modify the reference or to combine the reference teachings;
- (2) second, there must be reasonable expectation of success in obtaining the claimed invention based upon the references relied upon by the Examiner; and
- (3) third, the prior art reference (or references when combined) must teach or suggest all of the claimed limitations.

MPEP Section 706.02(j) further requires that the teaching or suggestion to make the modification or reference combination and the expectation of success, must be found in the prior art, and may not be based upon the Applicants' disclosure.

The Walker and Kuroda references do not provide a *prima facie* case of obviousness. The Walker reference relates to pricing and sales calculations after physical equipment has been physically installed. In contrast, the present invention claims a virtual arrangement which occurs before installation of physical equipment. Similarly, Kuroda is related to the control of physical machines in a set up. It is not focused on a virtual system which allows a user to test what-if situations. In contrast, the present invention specifically claims beverage equipment on a virtual work surface.

The prior art does not provide any reason or suggestion or motivation to modify control or monitoring of physical equipment to achieve the claimed virtual system. There is no reasonable expectation of success since both Walker and Kuroda deal with the physical environment and not the virtual environment. Clearly, neither Walker nor Kuroda either alone or in combination teach all of the claims limitations. The combination of Walker, Kuroda, and Holbrook only can be combined based on the hindsight teachings of the present application. There is no teaching or suggestion specifically set forth in any of the references cited by the

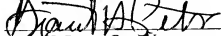
examiner to modify the reference to achieve the claimed invention. Nothing in these references provides an expectation of success in any attempt to do so is based solely on applicant's disclosure.

With the foregoing in mind, Applicant respectfully asserts that claims as amended herein overcome and are allowable over the Examiner's rejection under 35 U.S.C. §103. Applicant respectfully requests withdrawal of the examiner's rejection under 35 U.S.C. §103 and allowance of the present application.

Applicant encourages the Examiner to contact the undersigned attorney by telephone should the Examiner believe that a discussion of various modifications could help resolve any questions. Applicant also encourages the examiner to entertain an opportunity to interview this case to seek expedient resolution and allowance.

It is believed that fees are not required for this Response, however it is requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response with the fee for such extensions and any other fees or shortages in other fees, being charged, or any overpayment in such fees being credited, to the Deposit Account of Barnes & Thornburg LLP, Deposit Account No. 12-0913 acknowledging attorney docket no. (27726-99600).

Respectfully submitted,
BARNES & THORNBURG LLP



Grant H. Peters, Reg. No.
One of the Attorneys for Applicant

P.O. Box 2786
Chicago, Illinois 60690-2786
Phone: 312-357-1313
Facsimile: 312-759-5646

Customer No.: 23644

Date: March 19, 2009

CHDS01 GHP 529341v1